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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION
13

14 UNITED STATES OF AMERICA,) Case No. CV 08-7908 JFW (RZx)
15 Plaintiff,)
16 vs.) STATEMENT OF UNCONTROVERTED
17 PAUL M. SALISBURY, et. al.) FACTS AND CONCLUSIONS OF LAW
18) Honorable John F. Walter
19 Defendants.) Motion Hearing:
20) Date: March 30, 2009
21) Time: 1:30 p.m.
22) Ctrm: 16
23) United States Courthouse
24) 312 N. Spring Street
Los Angeles, CA 90012

25 STATEMENT OF UNCONTROVERTED FACTS

26 1. Pursuant to the provisions of the Internal Revenue Code,
27 Title 26 U.S.C., on the following dates, a delegate of the
28 Secretary of the Treasury made income tax assessments jointly

1 against defendants SALISBURY for the identified tax years and in
2 the amounts¹ as follows:

3	Tax Year	Date of	Amount of
4		Assessment	Assessment
5	1994	11/20/1995	\$44,016.01
6	1995	09/23/1996	\$33,562.88
7	1996	11/24/1997	\$27,751.61
8	1997	11/23/1998	\$50,019.45
9	1998	11/29/1999	\$19,852.12
10	1999	11/27/2000	\$28,459.31
11	2000	11/26/2001	\$26,741.32
12	2001	11/18/2002	\$45,782.13
13	2002	12/01/2003	\$59,158.65
14	2004	10/31/2005	\$51,947.58
15	2005	11/06/2006	\$80,035.78
16	2006	11/05/2007	\$50,851.98

16 (Declaration of Phillip Conrad, paragraph 2, and Exhibit 1).

17 2. In addition to the income taxes assessed jointly and
18 severally against defendants SALISBURY for the 1994, 1995, 1996,
19 1997, 1998, 1999, 2000, 2001, 2002, 2004, 2005, and 2006 tax
20 years, as set forth in the paragraph above, statutory interest,
21 penalties, other debits and collections costs have been assessed
22 and have accrued on such income tax liabilities, and certain
23 payments, credits and other reversals have been made against such
24 liabilities, so that the total amounts owing for each tax year as
25 of December 31, 2008, including assessed and accrued interest,

26
27 ¹ These amounts may not reflect any subsequent abatements
28 or adjustments. These amounts may also not reflect any payments
or credits made to the account.

penalties, other debits and collection costs, and taking into account all payments, credits and reversals, are as follows:

<u>Tax</u> <u>Year</u>	Unpaid	Assessed <u>Balance</u>	Accrued Penalties and Interest to <u>December 31, 2008</u>	Total Liability as of December <u>31,</u> <u>2008</u>
1994	\$32,745.12		\$45,249.11	\$77,994.23
1995	\$39,575.29		\$45,712.28	\$85,287.57
1996	\$25,242.67		\$24,366.27	\$49,608.94
1997	\$59,406.57		\$48,642.00	\$108,048.57
1998	\$23,554.81		\$16,324.35	\$39,879.16
1999	\$28,448.31		\$24,438.05	\$52,886.36
2000	\$26,177.24		\$19,054.11	\$45,231.35
2001	\$30,782.13		\$20,030.08	\$50,812.21
2002	\$43,158.65		\$24,292.49	\$67,451.14
2004	\$21,947.58		\$9,833.40	\$31,780.98
2005	\$65,535.78		\$23,500.42	\$89,036.20
2006	\$50,791.98		\$9,433.03	\$60,225.01
Total				\$758,241.72

(Declaration of Phillip Conrad, paragraph 3, and Exhibit 2).

3. Despite timely notice and demand, in accordance with the applicable provisions of the Internal Revenue Code, Title 26, United States Code, for payment of the assessments described above, defendants SALISBURY have neglected, failed, or refused to pay said assessments, and there remains due and owing, jointly and severally from defendants SALISBURY, on the assessments, as of December 31, 2008, the sum of \$758,241.72, plus accrued interest, penalties, collection costs and other statutory additions as provided by law, including all lien fees and collection costs incurred before or after the filing of this

1 Complaint, minus any payments, credits or reversals made after
2 December 31, 2008. (Declaration of Phillip Conrad, paragraph 4,
3 and Exhibit 2).

4 4. Defendants SALISBURY filed bankruptcy under Chapter 7 on
5 December 27, 1996, and received a discharge on April 15, 1997.
6 None of the tax liabilities in question were discharged.
7 (Declaration of Phillip Conrad, paragraph 5 and Exhibit 1).

8 5. Defendants SALISBURY filed an administrative offer in
9 compromise ("OIC") with the IRS that included taxable years 1994
10 through 2002. Defendants' OIC became processable on March 12,
11 2003. The Collection division of the IRS rejected the OIC on
12 January 2, 2004. Defendants timely appealed the rejection on
13 February 2, 2004. The OIC was rejected by the Appeals division
14 on July 28, 2005. (Declaration of Phillip Conrad, paragraph 6
15 and Exhibit 1).

16 6. The assessments set forth above were subsequently
17 perfected against all property and rights to property belonging
18 to defendants SALISBURY, including all property interests
19 defendants SALISBURY had in the subject property, by the
20 recording of five (5) Notices of Federal Tax Liens ("NFTL"), as
21 follows:

- 22 (1) The lien for the income tax assessed jointly and
23 severally against defendants SALISBURY for the
24 1994 tax year, was perfected by the filing of a
25 NFTL in the office of the county recorder for Los
26 Angeles County, California, on July 11, 1996, as
27
28

Instrument No. 96-1107104;²

(2) The liens for the income taxes assessed jointly and severally against defendants SALISBURY for the 1995 and 1996 tax years was perfected by the filing of a NFTL in the office of the country recorder for Los Angeles County, California, on May 12, 1998, as instrument No. 98-800740;³

(3) The liens for the income taxes assessed jointly and severally against defendants SALISBURY for the 1997, 1998, 1999 and 2000 years, were perfected by the filing of a NFTL in the office of the county recorder for Los Angeles County, California, on December 18, 2002, as Instrument No. 02-3108872;⁴

(4) The liens for the income taxes assessed jointly and severally against defendants SALISBURY for the 2001, 2002, 2004, and 2005 years, were perfected

² A copy of this Notice of Federal Tax Lien for taxable year 1994 was subsequently refiled in the office of the county recorder for Los Angeles County, California, on September 2, 2008, as Instrument No. 20081578317. On the same day, a Revocation of Certificate of Release of Federal Tax Lien (Instrument No. 20081578307) was recorded regarding tax year 1994 revoking the release of the original Notice of Federal Tax lien, filed on July 11, 1996.

³ A copy of this Notice of Federal Tax Lien for taxable years 1995 and 1996 was subsequently refiled in the office of the county recorder for Los Angeles County, California, on (con't...) September 2, 2008, as Instrument No. 20081578317. On the same day, a Revocation of Certificate of Release of Federal Tax Lien (Instrument No. 20081578308) was recorded regarding tax years 1995 and 1996 revoking the release of the original Notice of Federal Tax lien, filed on May 12, 1998.

⁴ A copy of this Notice of Federal Tax Lien for taxable year 1997 was subsequently refiled in the office of the county recorder for Los Angeles County, California, on September 2, 2008, as Instrument No. 20081578330.

1 by the filing of a NFTL in the office of the
2 county recorder for Los Angeles County,
3 California, on April 13, 2007, as Instrument No.
4 07-0892747; and,

5 (5) The lien for the income tax assessed jointly and
6 severally against defendants SALISBURY for the
7 2006 year, was perfected by the filing of a NFTL
8 in the office of the county recorder for Los
9 Angeles County, California, on July 21, 2008, as
10 Instrument No. 20081295633.

11 (Declaration of Phillip Conrad, paragraph 5, and Exhibit 3).

12 7. Defendants SALISBURY are married. Defendants SALISBURY
13 are the owners of the property against which plaintiff now seeks
14 to foreclose its tax liens. The real property against which
15 plaintiff seeks to foreclose its tax liens in this action (the
16 "subject property") consists of a parcel of real property located
17 in Agoura Hills, California, and is legally described as follows:

18 THE REAL PROPERTY IN THE COUNTY OF LOS ANGELES, STATE OF
19 CALIFORNIA, DESCRIBED AS:

20 PARCEL 1 OF PARCEL MAP NO. 6632, IN THE CITY OF AGOURA
21 HILLS, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA,
AS PER MAP FILED IN BOOK 110 PAGES 80 AND 81 OF PARCEL
MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

22 (Declaration of Phillip Conrad, paragraph 6, and Exhibit 4).

23 8. By virtue of a Grant Deed recorded on October 31, 1989,
24 with the Official Records of the Recorder's Office, Los Angeles
25 County, California as Instrument No. 89-1753230, defendants
26 SALISBURY acquired title to the subject property as "Paul M.
27 Salisbury, an unmarried man and Noreen L. Holborn, a single
28 woman, as joint tenants." (Declaration of Phillip Conrad,

1 paragraph 7, and Exhibit 4).

2 9. Defendant WASHINGTON MUTUAL BANK, has an interest in,
3 and a lien against, the subject property under a Deed of Trust,
4 recorded as Instrument No. 89-1753231, in the Official Records of
5 the Recorder's Office, Los Angeles County, California, on October
6 31, 1989, pursuant to said Deed of Trust. (Docket Nos. 24, 25).
7 On January 30, 2009, plaintiff and defendant WASHINGTON MUTUAL
8 BANK filed a Stipulation for Non-Monetary Judgment, which was
9 approved by the Court on February 3, 2009. (Docket No. 24). The
10 parties agreed that the federal income tax liens against the
11 subject property are subordinate and junior to defendant
12 WASHINGTON MUTUAL BANK'S Deed of Trust on the subject property.
13 (Docket No. 24).

14 10. Defendant STATE OF CALIFORNIA, FRANCHISE TAX BOARD
15 (hereinafter "FTB") has liens against the subject property
16 pursuant to 3 Notices of State Tax Lien filed in the name of
17 defendants SALISBURY for the taxable years 1995, 1996, 1997,
18 1998, 1999, 2000, 2001, 2002, and 2003. (Docket Nos. 20, 21).
19 On January 20, 2009, plaintiff and defendant FTB filed a
20 Stipulation, which was approved by the Court on January 21, 2009,
21 wherein the parties agreed to the lien priorities between the IRS
22 and FTB. (Docket Nos. 20, 21).

23 CONCLUSIONS OF LAW

24 1. The government may reduce its tax assessments to
25 judgment by bringing suit within the period provided by I.R.C.
26 § 6502, and demonstrating that the assessments were made and
27 remain unpaid. 26 U.S.C. § 7401; United States v. Silverman, 621
28 F.2d 961 (9th Cir. 1980); United States v. Prince, 348 F.2d 746,

1 748 (2d Cir. 1965); 14 Mertens, Law of Federal Income Taxation,
2 § 54A.64, p. 155 (Rev. 1987).

3 2. Under 26 U.S.C. § 6203, an assessment is made "by
4 recording the liability of the taxpayer in the office of the
5 Secretary in accordance with rules or regulations prescribed by
6 the Secretary." Section 301.6203-1 of the Treasury Regulations
7 provides that an assessment is made when an Internal Revenue
8 Service assessment officer signs a summary record of assessment
9 (Form 23C Assessment Certificate), with supporting records
10 describing (1) the taxpayer's name and address, (2) the character
11 of the assessed liability, (3) the taxable period (if any), and
12 (4) the amount of the assessment.

13 3. Once the government demonstrates that it has made the
14 assessments in question, the tax assessments are presumed to be
15 correct, and the taxpayer bears the burden of showing that
16 assessments are arbitrary or erroneous. Welch v. Helvering, 290
17 U.S. 111, 115 (1933); United States v. Chila, 871 F.2d 1015, 1018
18 (11th Cir. 1989), cert. denied, 493 U.S. 975 (1989). See also
19 Kappas v. United States, 578 F. Supp. 1435, 1439 (C.D. Cal.
20 1983); United States v. Molitor, 337 F.2d 917, 922 (9th Cir.
21 1964); United States v. Rexach, 482 F.2d 10, 15-17 (1st Cir.
22 1973), cert. denied, 414 U.S. 1039 (1973); Psaty v. United
23 States, 442 F.2d 1154, 1161 (3rd Cir. 1971).

24 4. In addition to the presumption of correctness, the
25 federal tax assessments enjoy a presumption of official
26 regularity, which establishes that the assessments were in fact
27 duly made by the Internal Revenue Service in accordance with its
28 regular procedures for the making of tax assessments, in the

1 absence of clear evidence to the contrary. Lewis v. United
2 States, 279 U.S. 63, 73 (1929); United States v. Chemical
3 Foundation, Inc., 272 U.S. 1, 14-15 (1926); Hughes v. United
4 States, 953 F.2d 531 (9th Cir. 1992); Parkinson v. Commissioner,
5 647 F.2d 875, 876 (9th Cir. 1981).

6 5. The IRS must collect assessed taxes by levy or court
7 proceedings within 10 years of the date of assessment. 26 U.S.C.
8 § 6502(a)(1). This period may be extended under certain
9 circumstances, including bankruptcy and the pendency of offers in
10 compromise.

11 6. With respect to a bankruptcy proceeding, the running of
12 the statute of limitations on collection is suspended for the
13 period during which the Secretary of the Treasury is prohibited
14 from collection plus 6 months thereafter in proceedings under
15 Title 11. 26 U.S.C. § 6503(h). Defendants SALISBURY filed
16 bankruptcy under Chapter 7 on December 27, 1996, and received a
17 discharge on April 15, 1997. None of the tax liabilities in
18 question were discharged. The Secretary was prohibited from
19 collecting the 1994 and 1995 income tax liabilities assessed
20 prior to the date of bankruptcy petition until the date of
21 discharge. 11 U.S.C. §§ 362(a) and (c)(2). The statute of
22 limitations on collection of the 1994 and 1995 tax liabilities
23 was therefore suspended for 292 days, from December 27, 1996,
24 through October 15, 1997 (which time includes the 6 months after
25 discharge).

26 7. With respect to offers in compromise (OIC), the period
27 of limitations under 26 U.S.C. § 6502 shall be suspended for the
28 period during which the IRS is prohibited under this subsection

1 from making a levy. 26 U.S.C. § 6503(a)(1). The statute of
2 limitation is suspended while an OIC is pending. Treas. Reg. §§
3 301.7122-1(g) and (I). Defendants SALISBURY filed an OIC that
4 included taxable years 1994 through 2002. Defendants' OIC became
5 processable on March 12, 2003. The Collection division of the
6 IRS rejected the OIC on January 2, 2004. Defendants timely
7 appealed the rejection on February 2, 2004. The OIC was rejected
8 by the Appeals division on July 28, 2005. Therefore, the statute
9 of limitations for collection for taxable years 1994 through
10 2002, inclusive, was extended for 869 days, from March 12, 2003
11 to July 28, 2005 (the period that the OIC was being considered by
12 both the Collections and Appeals divisions).

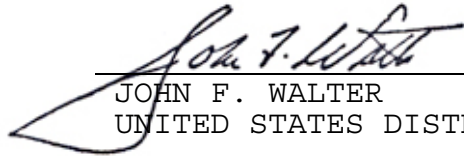
13 8. In the instant case, plaintiff has submitted evidence of
14 the making of the assessments against defendants SALISBURY. The
15 assessments are proved through the certificates of assessments
16 and payments, submitted with the attached declaration of Phillip
17 Conrad, and the amounts due on the assessments is likewise
18 established by the declaration of Phillip Conrad. Plaintiff has
19 therefore established its prima facie case for the debts owing to
20 the Internal Revenue Service by defendants SALISBURY.

21 9. Having established the interest of defendants SALISBURY
22 in the subject property, and that the tax liens of the United
23 States attached to such property interest, it is well settled
24 that the United States may foreclose its liens against the
25 subject property. See e.g., United States v. Rodgers, 461 U.S.
26 677, 103 S.Ct. 2132, 461 L.Ed.2d 236 (1983).

27 10. There are no disputed issues of fact, and plaintiff is
28 entitled to a judgment in its favor as a matter of law.

1 ~~8.~~ 11. Any uncontroverted fact deemed more appropriately
2 designated as a conclusion of law is incorporated here as a
3 conclusion of law.
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5 Dated: March 23, 2009



JOHN F. WALTER
UNITED STATES DISTRICT JUDGE

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